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SHOULD WISCONSIN ADOPT COMPULSORY AUTOMOBILE INSURANCE?

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THE question of the adoption of compulsory automobile insurance seems to be very much to the fore at the present time.

A very comprehensive article on the subject will be found in the American Bar Association Journal for this month (June, 1930).

Compulsory automobile insurance does prevail in Wisconsin. Section 194.14 provides that all busses and motor vehicles carrying passengers for hire shall be bonded or shall provide other means for payment for injuries resulting from the negligent use and operation of these vehicles. The limits provided are ten thousand dollars for an injury to any one person and forty thousand for several persons. There is a provision for exemption in the event financial ability to pay is proven to the satisfaction of the Insurance Commission. This law has been on our books for some years. The 1929 Legislature extended this principle in substance to the so-called rent-a-car companies. The Supreme Court had decided in *City of Milwaukee* v. *Ernst Froelich,* 196 Wis. 444, that the rent-a-car company is a mere bailor and not responsible for the negligent use and operation of the car by the rentor or bailee. The 1929 law provides that insurance shall be provided by the rent-a-car company for the protection of the public in the use and operation of the rented car by the bailee.

We have, therefore, two classes of motor vehicles subject to compulsory automobile insurance. The question for discussion this morning is shall this principle be extended to the private automobile or truck not within the foregoing classifications?

The first question to be answered is, is there any need for automobile liability insurance at all?

I doubt whether there is a single person in this room who will answer "no" to that question. If the individual is financially responsible and good for a judgment he certainly ought to have his car insured so as to prevent the personal payment of a large sum of money. If the individual is irresponsible and judgment proof, he ought to carry insurance to protect the public from an injury inflicted through his negligence.

If, therefore, it is advisable for automobiles to be insured against

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liability, the only question left for discussion is, ought this insurance to be made *compulsory?*

Now if the large percentage of automobile drivers carried insurance or were financially responsible, there would be no justification for making automobile liability insurance compulsory; but if the larger number of automobiles are not insured and the majority of owners are irresponsible, then liability insurance should be made compulsory, providing there is a social and economic need therefor.

Let me, therefore, address myself to the social and economic need, then I will state the estimates of cars not insured and of irresponsible owners.

Literary Digest Article: 31,000 More Killed in Our Motor Massacre.

The Literary Digest heads an article "31,000 more killed in our motor massacre." It goes on to say, "31,000 killed; one million hurt, That was our automobile toll for last year alone." It hardly sends a ripple or shudder through this hall, because we have become so accustomed to the automobile injury and death. Where formerly a newspaper would devote two or three columns to an automobile accident, today four or five accidents are couched in ten or fifteen lines.

Suppose I said to you 31,000 persons died and one million were injured by snake bites in the United States last year, that would sound appalling. Suppose I said to you that about ten thousand persons in excess of each man, woman and child in the city of Wausau, plus every person in this hall were killed, it would sound appalling. Just imagine, we kill more by automobiles than were killed in the American Expeditionary Forces in the World War. Just think of 83,000 men, women and children losing their lives in 1927, 1928 and 1929.

The Literary Digest goes on to say that last year's total of 31,000 was an increase of 147% in 9 years, and a jump of 10 8/10% from 1928.

It may be said that this is not an argument for compulsory automobile insurance, but an argument for safety measures. It is an argument for both—safety measures by all means, and provision for payment of those who unfortunately suffer through the use and operation of the automobile. In this connection I may say opposition to automobile insurance has raised the cry that compulsory automobile insurance will create more accidents and be responsible for greater recklessness. This is so contrary to common sense that I would not spend any time in answering it except for the reason that it is still urged by the insurance interests as an argument against the adoption of compulsory automobile insurance. However, those investigators

who have made impartial studies of the subject show that the argument is empty and fallacious. The answer to the argument is best stated by the committee appointed by the City Club of Portland to investigate compulsory automobile insurance. On page 10 and 11 of this report is the following:

"One of the objections to compulsory automobile insurance which is most insistently urged is that it will tend to produce careless driving. We have given much thought and careful consideration to this claim and have tried to reach the merit of it.

"It is expressed vigorously by all writers in opposition to the idea of compulsory insurance. We have already quoted Mr. Ives' expressive phrase that the motto should not be "Pay as You Kill." It is said that when the motorist has paid his premium he will feel that he has done his duty and is beyond attack, and that his payment is a license to do damage. Herbert L. Towle, writing in the Atlantic Monthly for July, 1925, puts it differently:

'But it is feared in this country—with seemingly much reason—that the assetless, selfish owner who makes most of the trouble will abuse the privilege of insurance. He will have two conflicting thoughts in the back of his mind: The law may 'get' him, but his insurance will protect him. And these two thoughts will subtly contend for mastery while his driving habits are being formed.'

"We do not find ourselves to a great extent in sympathy with the point of view which urges that the motorist will regard his insurance policy as a license to hurt somebody and will therefore carelessly do so. We believe that care in driving has little to do with whether or not the driver carries insurance but involves mainly other faculties and habits of the driver. A person lacking in mental alertness or a duly generous consideration of the rights of others is apt to drive carelessly, whether he carries liability insurance or not. One having these qualities will be a better driver even if he is insured."

"We doubt if the existence or non-extence or insurance is ever in such a forward position in a driver's mind as to be an actual, operative cause of a collision or of a negligent attitude leading to a collision."

Compulsory Insurance Will Make For Safety

On the contrary, Professor Harry J. Loman, professor of insurance at the University of Pennsylvania, makes the argument that the more insurance written the greater the tendency to safety.

"The statement that accidents will not be reduced is also debatable.

Perhaps some persons will become more reckless if they are no longer financially responsible, but the fear of not being able to get a license unless insurance has been obtained and the desire to reduce the cost of insurance will have some effect. It is a well known fact that organized efforts toward the reduction of insurable losses follows the issuance of insurance and does not precede. Consider for a moment the efforts and success of the fire insurance companies toward the reduction of

fire waste in recent years, conservation of life by the life insurance companies and the reduction of industrial accidents by the casualty companies. Prevention and conservation are among the greatest services which insurance companies are rendering society today, but it should be remembered that they did not begin these conservation campaigns before they had assumed risks. Therefore it is quite reasonable to expect the insurance companies to live up to their reputation in dealing with automobile accidents. Moreover, at the present time nearly one half of an automobile liability insurance premium is used for expenses other than the amounts paid to claimants. If everyone must have the insurance the increased volume of business should enable some savings in expenses, especially those having to do with acquisition."

It may be said that the majority of people are opposed to compulsory automobile insurance. Since the question is whether Wisconsin shall adopt compulsory automobile insurance, I want to say that both the worker and the farmer are in favor of it. I will read to you the preface of my own article prepared on compulsory automobile insurance, printed and circulated by the Wisconsin State Federation of Labor. The economic background is stated in this preface.

"(By resolution passed at its annual convention, The Wisconsin State Federation of Labor is on record for Compulsory Automobile Insurance. Thousands of men and women are being crippled each year in automobile accidents. The economic loss to workers and the general public is great; in many instances recovery cannot be had by an injured person solely because the driver or owner was not insured. Although primarily interested in the conservation of life, it is necessary to prevent injured workers and others from suffering economic loss and to this end the Wisconsin State Federation of Labor advocates compulsory automobile insurance.)"

Let me quote an editorial in the Wisconsin Agriculturist, one of the leading farm papers of this state dated December 6, 1926, which was written after this paper had invited its readers to express their opinions upon whether Wisconsin ought to enact a law of this kind.

"According to letters we have received it would seem that the sentiment among farmers for compulsory liability insurance of automobile owners is pretty *nearly unanimous.*"

I think you will agree that the workers and the farmers constitute a large majority of the citizens of this state.

It will be asked ,therefore, in view of the several bills which have been introduced at each Legislature, why has it not been adopted? Professor Loman states the answer in the question he propounds.

"If the bulk of the economic loss as previously indicated falls upon the poorer classes and they go un-indemnified, it may be asked why

have so many states considered remedial legislation and failed to enact it?

"The Answer is: Because such proposals have received only passive support and very active resistance."

For instance, I have appeared for such bills before the Legislature during the last three or four years. In most cases, I was the only person appearing to talk for the bills. It is pretty hard to get an unorganized group of persons together, but each time I appeared on a bill there were a number of insurance men ready to appear in opposition. The forces against compulsory automobile insurance are so well organized and have so much money that they are succeeding in stemming the adoption of the compulsory plan, but they will not succeed in preventing its adoption, for I will soon show that they are conceding the principle in their own suggestions for remedial legislation.

I have digressed somewhat to make the safety argument because I think it opportune to do so at this point. However, I want to add that in addition to the 31,000 killed and one million hurt the economic loss from motor accidents as estimated by the National Safety Council is $850,000,000 for 1929. More are killed and injured in auto accidents than in industry.

Now the question arises, how many cars are insured? I have not the figures for Wisconsin, but the estimates made for the United States vary from 16% to 35%. Mr. H. P. Stellwagen, secretary and treasurer, National Bureau of Casualty and Surety Underwriters, in an article appearing in the annals of the American Academy of Amerincan Political and Social Science for March, 1927, says:

"The future development of the business may be visualized when it is remembered that today of the cars on the road in the United States, only 16% are insured for public liability, 13% for property damage, 2% for collision, and perhaps 33 1/3% to 50% for fire and theft."

Personally, I think 16% for public liability is low. Let us assume that it is as high as 30%. Then it leaves 70% of automobile owners uninsured. It is difficult to obtain accurate statistics as to what proportion of this 70% is irresponsible. The opinion of impartial investigators of the subject claim that 75% of uninsured cars are irresponsible.

Then, if the number of persons killed and injured exceeds the number of deaths and injuries in industry which were considered so important a social and economic problem as to bring about compulsory workmen's compensation, and if the economic losses through automobile accidents and injuries are $850,000,000 a year, and if

70% of car owners are not insured, and if 75% of this 70% are irresponsible, does not that make out a case for compulsory automobile insurance?

I am mindful of the objections that will be raised. They are many, and if I were to treat all of them, I would be here the balance of the day talking to you. I wish to take up, however, the more important ones and answer them briefly.

(1) COMPULSORY AUTOMOBILE INSURANCE WILL NOT LESSEN ACCIDENTS.

It is not intended to have any effect upon increasing or decreasing accidents. My own opinion is that it will decrease them and that is the opinion of Professor Loman. It has had that effect in workmen's compensation. The issuance of insurance and the payment of claims results in the adoption of safety measures. Only a moron will intentionally injure anyone. Again, the question of safety is not to be handled by telling one not to take insurance. It is to be handled by traffic legislation, punishment of the careless and, above all, the deprivation of a license and refusal to insure one who has been found guilty of reckless conduct or drunken driving. The man who is willfully reckless or drunk while driving should not only be denied a policy of insurance, he should be denied a license to drive.

(2) THE ARGUMENT IS OFTEN ADVANCED THAT AT THE PRESENT TIME THE COMPANIES SELECT THEIR RISKS AND UNDER COMPULSORY INSURANCE THEY WILL HAVE TO TAKE ANY AND ALL RISKS.

My answer is, that they cannot select their risks even now. The laws of this state and most states now provide for omnibus coverage. That is, the insurance covers any person using the car with the owner's consent. Therefore, a company may consider the owner of the car a good risk, but if this owner has a young son or a friend whom he permits to drive the car and who is reckless, the insurance company has no method of preventing this driver from driving the car since it does not know in advance who he is and it is obliged by law to cover him.

However, insurance today is carried for a twofold purpose—not only to indemnify the owner against money he may have to pay, but it is also to create a fund from which to compensate the injured who may be legally entitled to compensation, in other words, the public. Now, it is quite necessary, therefore, to recognize the fact that the public should be protected as against any accident with an automobile, whether it be a drunken driver, a colored person or anyone else. The loss is the same to the unfortunate whether it is inflicted through the carelessness of a gentleman or through the recklessness of a moon-

shiner. All that might be said is take away the license from the drunk and the moonshiner, etc., and classify risks. In Connecticut, those who have had accidents are classified and they are obliged to pay more for the insurance. There are many policies being written in this state which allow a deduction from the premium upon renewal of the policy if no accident has been had. Insurance is now classified by districts and zones. Why cannot risks be so classified? This is done in workmen's compensation. The hazardous risk, like the employer engaged in the business of structural iron work, pays much more than the lawyer employing clerks. The heavy cars pays a greater premium than the lighter one. There is no trick at all in classifying risks and this argument that companies will be compelled to take all risks is met by classification. The utterly willful, reckless individual should be denied a license.

(3) THE INCREASED COST TO THE AUTOMOBILE DRIVING PUBLIC.

My first reaction to this objection is to become indignant. I have not very much sympathy with the fellow who owns a car and says, "I will not buy insurance because the premium is too high." My answer to him, he does not have to buy a car or drive one. But if he wants to own and drive a car he must take upon himself a number of burdens. He must buy gasoline although he may think the price is too high. He must buy tires, and pay for repairs. He must pay a gasoline tax for the use of roads, and he must pay for a license. He must pay a personal property tax which in many instances exceeds the premium for a policy. All these things impose a burden upon him and they are surely items of expense, but they are no more necessary than the insurance premium. And just as he is compelled to buy a license whether he likes to or not, and to pay a personal property tax whether he likes to or not, and to pay a gasoline road tax whether he likes to or not, he should be compelled to pay an insurance premium whether he likes to or not. Just as much as the roads are an economic and social factor through the use of his automobile, so are the lives and limbs of human beings. My own opinion is that the premiums will not increase and, in fact, ought, after the system gets working, decrease because of lessened overhead expense. Have you ever made inquiry as to how much of the premium is devoted to the actual payment of claims? Well, let me read it to you.

AUTOMOBILE LIABILITY INSURANCE IN WISCONSIN.

Year	Premiums	Losses	Pct. of premiums paid in losses
1928	$5,404,981	$2,002,491	.37
1927	4,160,022	1,771,793	.42½

1926	3,584,697	1,616,849	.45
1925	2,954,350	1,242,613	.42
1924	2,590,424	841,299	.32

Figures taken from Report Wis. Insurance Commission, 1929, pp. 166-67.

The objection made to the expense is camouflage. Behind this objection is the true one, that there will not be as much profit for the insurance men as there is now. They know full well that there will be a demand for a reduction of this item of 63% overhead and commissions. They know full well that the present commissions running anywhere from 17% to 30% given to insurance agents for acquisition will be cut down by general compulsory automobile insurance, and that is one of the big reasons for their objection to compulsory automobile insurance.

(4) IT MAY BE SAID THAT IF EVERYONE CARRIES INSURANCE IT WILL MAKE FOR LARGE VERDICTS, JURIES WILL BE DISHONEST, OUR COURTS WILL BE CLOGGED WITH HUNDREDS OF CASES, AND THERE WILL BE COLLUSION.

My answer to all these objections is that there may be defects in the administration of cases at common law, but these defects are no more than arise in any other business. In most cases now tried in court backed by insurance, the juries know that there is insurance. My experience has been that the verdicts are no larger in these cases than in the cases where there is no insurance. I think that juries as a whole are honest and they will soon know that increased verdicts will give rise to increased premiums, and that will overcome the big verdict.

The argument that universal insurance will make for many more court cases and thereby clog the courts is unsound. If a man has a cause of action the courts should be open to him, and that is contemplated under our system of government. What is really meant by those who advance this argument is that with 70% of cars uninsured thousands of owners of automobiles responsible for accidents will be execution proof, thus the injured person will not resort to the court because to do so would not result in collection of the judgment obtained. I do not think that any citizen will approve of keeping just cases out of court by permitting persons liable for an injury to another to remain financially irresponsible. If those who make the argument really mean what they claim, that is, by virtue of the fact that insurance has been written it will encourage injured persons to make claim, then that is an argument against writing insurance and all insurance ought to be abandoned since the writing of it gives rise to litigation.

(5) THE LAW WILL NOT APPLY TO THE VISITING MOTORIST.

The answer to this is obvious. Most Wisconsin cars do most of their traveling in Wisconsin, and that is true of every other state. Simply because a small percentage of mileage traveled and some accidents are the result of visitors is by no means any objection to compulsory automobile insurance. Then, my answer is that every state adopt it. I am not opposed to uniformity in this respect.

OPPOSITION TO COMPULSORY INSURANCE AS BEING CONTRARY TO THE AMERICAN SPIRIT.

It may be urged that the American spirit is opposed to compulsion. That is not only the American spirit, it is the spirit of every people. Yet every people must surrender certain freedom and liberties for the protection of its citizens as a whole. I have shave shown that this is a social question and an economic loss runing into millions, affecting the citizenry as a whole. When, therefore, the state is confronted with a problem of protection of its citizens, it has the right and should compel the individual to do certain things and surrender certain liberties or freedom. No government or free people can remain free unless it protects the public and for this protection it is often necessary to compel certain things. What difference is there when we come to consider the principle of workmen's compensation? Men were injured, there was a loss to society, protection had to be had and legal compulsion was adopted. It may be said that that was due to contract between employer and employee. What difference does it make whether the loss to the community is by contract or independent of contract? The problem is an economic one and a social one, and the state owes to the citizens as a whole to see to it that this protection is given.

COLLUSION

As far as collusion is concerned, that must be met as any other fraud is met. Relatives may sue relatives now, a wife may sue a husband in Wisconsin, occupants may sue the driver since the abolition of imputed negligence. I do not believe that there are many collusive claims, and that if there are some, they are to be met in the same way as they are met in any other business. Health and accident insurance policies are issued and the collusive or fraudulent claim must be met there. The fraudulent fire claim must be met and it is no argument against compulsory insurance to say that the compulsory issuance of a policy ought not to be had because there may be collusion in the making of claims.

As for malingering, it will be met in the same way as it is met under workmen's compensation.

The real big objection made to compulsory automobile insurance by insurance companies is:

SOCIALISM AND PATERNALISM MANIFESTED BY STATE INSURANCE.

This objection, my friends, is really the real reason why the insurance companies and insurance interests are opposed to compulsory automobile insurance. They know that there can be no sincerity about the other arguments. They know they have not a leg to stand on when the other objections are considered. These companies are in the business of insurance, and here the state wants to compel everyone to give them business, and here they are raising objections to taking it. They say, "We realize there is still 70% of vehicles to be insured, but we don't want you to hand over the 70% to us."

The objection of socialism and paternalism would not be raised by the companies were it not for the fear of state insurance, because every state and government must in a measure be paternalistic. The maintenance of a poorhouse, the giving of food to the poor, the maintenance of orphanages, the payment of widow's pensions, the payment by the state for the slaughter of tubercular cattle must be termed paternalism and socialism.

Workmen's compensation may be termed a form of paternalism. Read the Oshkosh platform just recently adopted. It almost drips with paternalism. Are we to believe that insurance companies are prompted to throw away business and make less profit simply because the principle sought is paternalistic? The big fear is it will lead to state insurance. Most of the articles written by those opposed to compulsory automobile insurance pass this by rather lightly. Yet a number of them plainly state that that is the fear the insurance companies have. Why is that fear so strong in these companies? They know full well that with a compulsory automobile insurance law, the government will insist on stringent regulation of their affairs. They know full well that the premiums will have to be fixed by the state and that will mean lessened commissions and overhead, and let me ask why should 63% be devoted to commissions and overhead? Lawyers have been criticized for taking 33% as a fee in a claim which is contingent and the fee in any event problematical. Yet here are insurance companies getting away with 63% , and, believe me, that is an ample reason for not wanting state interference. They know full well that they will have to toe the mark, if not there will be a state insurance fund and, of course, self-preservation for their business dictates opposition.

Here enters their argument of socialism; that the state ought not to go into private business; that it ought not to compete with its citizens, etc. My answer to that is, if the insurance companies can do

better for the people than the state can do, they will themselves demonstrate that there is no need for state insurance. If they cannot do that, then they have no right to expect that the state shall refrain from going into the business when the insurance the companies give is more costly and less efficient. There are many companies still issuing narrow and restricted policies with many trick clauses. Private companies need have no fear of state competition if they are the better of the two.

THE FOREGOING IS BASED ON THE MASSACHUSETTS PLAN.

All of the foregoing has been based on one form of compulsory insurance. It is the form in a way adopted by Massachusetts, which state now has a law requiring every owner of a motor vehicle to carry a policy of insurance with a limit of five thousand dollars for one injury and ten thousand for several, or to furnish a bond for that amount, or deposit five thousand dollars in cash. I wish I had the time to take up the Massachusetts automobile insurance law. Massachusetts, being the first state to adopt the plan, had quite an experiment on its hands. It is true Massachusetts met with some difficulties. You may imagine that a subject as comprehensive as compulsory insurance newly adopted will disclose certain defects. I have no doubt that Mr. Jackman will call your attention to several of them. I am not going to take them up in detail. I may concede that there are some defects, but I want to state this; that the legislature of Massachusetts appointed a senate committee to study the compulsory insurance law and related matters in 1929. It reported in January, 1930. The report contains almost 300 pages. I merely want to read what conclusions this committee came to after conducting extensive hearings at which the insurance interests and others were given ample opportunity to present their objections and proposals.

"As the Commission now understands the problem and the results of three years' experience with the present law, *the Commission does not believe in giving up the substance of the experiment which this Commonwealth has found courage to try.* On the other hand, the Commission believes that some of the phraseology and practice of the insurance companies in supplying information for the public has caused misunderstanding, and we recommend some striking changes in the existing law with the belief that the proposed changes will greatly facilitate the accomplishment of the real purposes inspiring the original act of the General Court, viz., the safety of our people and their indemnification for injuries caused by motor vehicles licensed by the Commonwealth.

"We are unanimous in believing that the present law can be amended so as to accomplish its purpose more effectively, and accordingly, if the amendments which we submit are adopted, we feel that the in-

surance companies should submit to a further trial of the law rather than to urge the adoption of experimental plans adopted in other states. We also believe that, if the changes which we suggest are adopted, Massachusetts will in some respects take another step in advance of other states which have an equally large number of cars registered."

"*We oppose the repeal of the present motor vehicle insurance law of Massachusetts,* but recommend many amendments to make that law more effective, and to check such abuses as may exist in connection with the making of claims for injuries."

"There was, and is, a common impression that our present insurance law was adopted as a safety measure. It was not. It was recommended and adopted, primarily, to provide indemnity for injured persons from irresponsible car owners who did not carry insurance. We believe that safety measures are an essential form of 'preventive medicine' for the current disease of careless driving.

"We recommend required inspection of the mechanical equipment of cars as a condition of insurance, and a system of 'demerit' rating, as effective measures to prevent accidents."

So you see that despite the fact that Massachusetts was dealing with a new problem, despite the fact that there are many new improvements to be made, the commission was unanimous in opposing the repeal and stating that it recommends the plan be retained.

It may be noted that a number of insurance companies have tried to sabotage the plan, and have thrown "monkey wrenches into the machinery" to discredit it.

THE COMPANIES SEE HANDWRITING ON THE WALL, SO TO TEMPORARILY THWART THE ADOPTION OF COMPULSORY AUTOMOBILE INSURANCE THEY OFFER THE SAME REMEDY IN A DIFFERENT FORM.

The foregoing is an out and out requirement for compulsory automobile insurance on the Massachusetts plan. The companies, realizing that there is a human need and cry for indemnity to the injured, and being opposed to compulsory automobile insurance, and in an endeavor to stave it off, are recommending the adoption of so-called "compulsory insurance after the first accident." Now that phrase is my own, but the proposal is submitted in many different forms and has been adopted by many states. If you will refer to the American Bar Association Journal of this month, you will find this subject very ably discussed and presented by W. J. Heyting. He states, "Wisconsin, Iowa, Virginia and New Hampshire have enacted statutes designed to do no more than to force payment for damage already done by bringing pressure to bear on the person liable." The provision is Section 85.08, subsection 10 (5), and provides in effect that failure to pay a judgment as the result of an automobile accident gives the court the right to revoke, the license of the driver until such judgment is paid. Mr.

Heyting follows the foregoing statement with this significant remark:

"If, however, such person is unable to pay the bringing of pressure to bear upon him is not very satisfactory to those who have suffered the damage."

He goes on to say that other states are more forceful in that they require security in advance for the satisfaction of damages that may occur in the future.

Mr. Edward C. Stone, an insurance authority and a bitter opponent of compulsory automobile insurance, delivered an address in Milwaukee, October 20, 1926, in which he gives the subject as follows:

"A new and better remedy is thus suggested. Let us not be too arbitrary in the matter. Let us give the automobile operator or owner a preliminary hearing in some form in some court of competent jurisdiction upon the proposition whether he was wholly to blame for the particular accident. If the court frees him from blame for causing the accident, he continues as before to operate or to use his automobile. If, however, the court finds him solely to blame for the accident, the court will take such action as will bring about the result that he cannot continue to operate any automobile or to use the particular automobile concerned in the accident unless and until he puts up such security as the court orders, up to, say, $5,000—the amount of protection usually given in a liability policy—to pay the judgment that later may be awarded.

In other words, Mr. Stone wants a preliminary hearing after an accident and then he wants the fellow to put up security to pay any judgment for that accident or lose his license to drive. We again refer to Mr. Heyting's remark, in what way does that help the poor person who has been hurt? Other insurance authorities recommend that state laws provide that after the first accident the owner of an automobile shall be required to put up security for the payment of a judgment resulting from any future accident. In other words, it is the old principle that every dog is entitled to one bite. The very fact that insurance men advocate these principles is an admission that compulsory automobile insurance is right. What sense is there in saying to one, "You may use a car without insurance until you have crippled or maimed someone? After that you must get insurance." It seems to me like a case of locking the barn after the horse has been stolen. One does not know when a serious accident may occur. The first accident may quite seriously injure one. Just why this fellow should receive no protection but the second fellow should, is something I cannot understand. Of course, the insurance company feels, I suppose, that having had one big accident, the fellow will be spotted and be given no insurance. To me the greatest confession of weakness in the opposition is made by the insurance companies when they advocate the adoption of these various plans referred to by Mr. Heyting in his

very splendid article in this months' issue of the American Bar Association Journal.

Mr. Heyting goes on to say:

"All the statutes so far considered make the duty to furnish evidence of financial responsibility depend upon the happening of an accident or the commission of some offense. They do not, with the exception of the Rhode Island Act, in so far as it requires security from minors who apply for registration, impose a duty to give security until after an accident has occurred or some offense has been committed.

"Massachusetts has in this respect the most effective statute. This Act provides that the registrar of motor vehicles shall require evidence of financial responsibility from every person applying for registration of his car, as a condition precedent to granting such application. The effect of the Act is to safeguard the public against the financial irresponsibility of every owner and to insure recovery in every case where the car is being driven by the owner or with his consent irrespective of whether the owner or driver has ever before done any damage or been convicted."

THE ONE SOUND OBECTION THAT MAY BE MADE IS THAT 60% OF THOSE INJURED MAY NOT RECOVER BECAUSE OF NO LIABILITY OR CONTRIBUTORY NEGLIGENCE AS TESTED BY COMMON LAW PRINCIPLES.

There is one real objection which may be made and which, I must admit, is so well founded that it prompts me to suggest an entirely different form of compulsory automobile insurance than the proposals heretofore discussed. The objection I have in mind is that it is estimated 60% of persons injured do not recover and will not recover at law because of no negligence on the part of the driver or contributory negligence on the part of the injured. Now that is an objection, but there are two forms of compulsory automobile insurance. The one already discussed is that everyone shall be insured or furnish security against liability as tested by common law principles; and the other is compulsory auto compensation insurance.

One of the earliest and foremost advocates of this plan is Judge Marx of Cincinnati. *I personally am for this plan.* I do not think that the present method of handling automobile injuries, that is testing the cases by common law rules in courts of law, is scientific, just or adequate. I think that court procedure and the common law are as outworn and inappropriate to this form of litigation as they were found to be in master and servant litigation. *The automobile has presented a new social and economic problem. The common law is inadequate to meet that problem. A new method must be adopted and that method simply stated is: Adopt a plan similar to workmen's compensation for all automobile accidents and injuries.*

When such a proposal is heard by a lawyer for the first time he is amazed. We are so steeped in rules of common law as applicable to negligence cases, that the mere mention of compensation to an injured person irrespective of fault on the part of the person causing the injury upsets our equilibrium. It strikes the lawyer as asking too much to have one pay for something for which he is not responsible. That would be all very well if the matter of automobile injuries had not presented the social and economic problem. Since it has, as I have shown, presented such a problem, the rules of procedure and compensation for injuries must be put upon a modern, economic and social basis. The common law, as administered by courts in auto cases, does not bring about a just result. The fact that the injured must assume the burden of proof often relieves a responsible defendant from liability because the injured is unable to get the necessary proof. Frequently there are no witnesses and the person injured is knocked out. Likewise, contributory negligence is a factor which legally defeats many just claims. The law that negligence of the plaintiff however slight, contributing to his injury defeats recovery is unjust and totally inadequate to meet the needs. These defenses were responsible for the adoption of Workmen's Compensation. It was found that contributory negligence as presented in the defenses of fellow servant, assumption of risk, etc., prevented a solution of what had become a great social and economic problem on account of loss to men and women in industry through injury. The fellow servant doctrine and assumption of risk were all right before the machine age, but when courts commenced to apply these doctrines in the machine age it was all wrong and had to go.

Likewise, these doctrines, which are a form of contributory negligence, are not applicable to the motor vehicle. They are becoming more unjust because of the courts' adoption and application of them to automobile cases. There is a tendency on the part of the Wisconsin Supreme Court to apply the old, outworn, unjust assumption of risk doctrine in automobile cases. This, to my way of thinking, is bad law since most automobile accidents involve violations of state statutes; "assumption of risk" ought not to benefit an automobilist who violates the state statutes, particularly where the injury is to a pedestrian. We discover also that most of the fatalities and injuries are to children under 15 and to older persons over 60. This indicates that the discretion of children and the lack of alertness of older persons are no match for the swift moving automobile. Yet the common law test is still adhered to, namely, any slight want of ordinary care by a child or an older person defeats recovery. The instruction that children are obliged to exercise only that degree of care of children of like age and

discretion has no effect upon the jury. The fact remains that the common law permits recovery to be defeated by a child if it is guilty of a slight want of ordinary care. This principle can best be illustrated by the case of *Schmidt* v. *Reiss,* 186 Wis. 574. A little child somewhat over six years of age was struck by an automobile while she was proceeding home from school with companions. It was testified by the witnesses that the children were running across the street and that the automobile was approaching at a rapid rate of speed. The children were playing in the street oblivious of automobile traffic. The jury found that the wriver was negligent by failing to keep a proper lookout. When we consider that he knew there was a school nearby and saw children in the vicinity playing in the street, etc., is it fair to test or compare this child's negligence with the negligence of an adult driver? The child even if negligent and careless could not harm the automobile, yet the automobile could and did harm the child. Yet the same test—"failure to exercise ordinary care," is applied to both.

I am not criticizing the finding of the jury. I am not criticizing the decision of the court who tried the case or the affirmance by the Supreme Court. I am criticizing the mechanics or tools with which the court, the jury and the Supreme Court have to work. They are inadequate, and they do not lead to a just result. The whole scheme of things as presented by the common law in this character of litigation is wrong.

There are cases where the person injured or killed is not the least bit to blame and yet no recovery can be had, as in the case of latent defects.

Just imagine a most careless employee driver who runs upon a sidewalk, cripples a person and thereafter runs into a post and injures himself. The driver, although responsible for the accident, being an employee, gets immediate medical attention, compensation, etc. His innocent victim has to wait and possibly endure a law suit. A police officer while on duty is killed by an automobilist; on the same day one who is not a police officer and not on duty is killed in the same manner by an automobilist. The policeman's widow obtains compensation; the other's widow cannot recover because the driver has no insurance and has no property. This is unjust as the loss is the same to each widow, and the element of contract in no way changes it.

The proposed plan will abolish this unjust discrimination. It will extend the benefits now obtained by one class to the entire community.

It is significant that in Ohio the administrative cost of workmen's compensation insurance is 5% of the total premiums collected. This system will likewise relieve the automobile owner of unlimited liabil-

ity as is the case at the present time. It will do away with court congestion, and above all will compensate the 60% who do not now receive compensation. This method of compensation does not necessarily mean state insurance. My answer to the fear that it will lead to state insurance is that it is up to the companies to so conduct their business and charge reasonable premiums, avoid exhorbitant overhead expense and commissions, as to overcome the desire for state insurance. In any event, the question of state or private insurance is a matter of public policy to be determined by the state legislature. It certainly will lead to accident prevention. One of the greatest boons of workmen's compensation is accident prevention. The Ohio compensation law requires that a certain amount of the money received money received from insurance premiums must be set aside for accident prevention. Even if accidents were not prevented by this plan, but if did provide compensation for those who were injured and maimed by automobiles, it is justified. I am sure, however, that it will prevent many accidents.

Judge Marx gives a very fine illustration of compulsion. He says if we are threatened with a smallpox epidemic the law will compel vaccination to stop the spread of the disease. If thirty million automobiles on our streets killed more people than are killed in industry, injure more people than are injured in industry, something must be done to stem the disaster and compensate those who suffer thereby.

May I take one moment longer to anticipate the objections.

1. Innocent drivers will be made to pay damages whether they are to blame or not. I have answered that by stating that it is a social problem and the law of average prevails, which law is part of the insurance business and contract. The objection that it is paternalistic and socialistic is already answered in connection with the other form of compulsory automobile insurance.

It has been said by some that it will be impossible to establish an equitable scale of benefits especially for women and children who do not receive wages. I think that the present Industrial Commission could in a very short time establish an equitable scale. For instance, difficulties were experienced in allowing sums to parents who were partially dependent on children killed in industry. Labor and insurance companies got together with the Insurance Commission and an average of $1,200 was agreed upon, thus eliminating the difficulty. With respect to minors suffering major injuries, such as the loss of a leg or of an arm, the amount award should be the same as an adult earning the maximum at the age of 21 on the same basis as is now paid under compensation. As for married women unemployed, if not a widow and if living with her husband, an amount based upon a moderate estimate of the worth of the household services during the heal-

ing period plus medical care and attention. If a major injury, an equitable percentage, such as one-half or one-third of that given to a man employed in industry, may be arrived at. There ought to be no greater difficulty along these lines than in computing a schedule for employees for every kind of an injury or occupational disease.

It is quite just that the burden of paying for automobile accidents should be put upon the automobile, just as the burden of paying workmen's compensation is put upon industry. We must remember that the present traffic problem is created by the automobile and the burden should be put upon it. Injuries to pedestrians constitute 50% of our accident cases; the pedestrian creates no traffic problem and although movable is not a dangerous instrumentality; the automobile is. Accidents are often due to poor roads, narrow streets, etc. Neither the pedestrian or automobilist are responsible for this condition. Yet injury results and while there is no legal fault on the part of the driver, the injured suffers because of consequences totally beyond his control. That surely is not just.

The placing of the burden of the expense upon the automobilist is much more equitable than the placing of it on the injured. After all, the loss of a dollar is the loss of a dollar, whether it be to the one causing the injury or the one who is injured. If people through injury suffer a loss of $850,000,000 per year, is it not better to distribute this loss among all the users of automobiles at the rate of, say, $30.00 or $35.00 per automobile, than to impose a burden of several thousand dollars on one automobile driver, nothing on another, and in many instances several thousands of dollars on the injured person, who is unable to collect because he cannot either establish negligence of the automobile driver, or is himself guilty of contributory negligence, or the driver is without insurance and is judgment proof. Insurance should not only protect the insured but it should be made to meet the social and economic need, whether it be fire, life, accident or health, and since the automobile accident presents an economic and social problem, the insurance ought to be applied socially, that is, it ought to provide payment to the injured so that the social and economic need is met. If insurance companies refuse to recognize this idea, then there is every reason for the state to do so.

With respect to fraudulent claims, they will have to be met as they are now in the general run of insurance claims; with respect to malingering, this will have to be met in the same way as the subject is met in workmen's compensation. If vehicles are involved the plan will be the same, namely, compensation based upon injury.

The problem is one for lawyers to consider. It must not be left entirely to the insurance companies and allied interests if a just solution is to be had. I feel sure that every state ere long will adopt some form of compulsory automobile insurance.